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BAR BULLETIN



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# Los Angeles BAR BULLETIN

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VOL. 25

OCTOBER, 1949

No. 2

## A WORD FROM THE PRESIDENT



Clarence B. Runkle

A SURVEY of local bar associations in California was conducted during the past year by a State Bar Board of Governors committee. In a questionnaire covering all phases of local activities, nineteen out of fifty-three associations stated that they do not encourage members to attend the conventions of the State Bar. Eleven replied that their members were "largely indifferent or neutral" to the State Bar. Seventeen did not even answer a

question concerning attendance at the American Bar conventions. I am happy to say that our association was not in any one of these groups. There is much room, however, for enlargement of our efforts.

The recent State Bar convention at San Francisco, August 29 to September 2, was outstandingly successful. The registered attendance was 1905,—a very fair percentage of the approximate 14,500 attorneys in California. The sessions were devoted largely to panel discussions by experts in their respective fields, of topics of vital importance to working lawyers: Appellate Procedure, Taxation, Criminal Law and Procedure, Industrial Accident Law and Procedure, Formation of Corporations and Issuance of Stock, Property Settlements, Office Management, Mechanics Liens, Administrative Law, Unlawful Detainer, Jury Trial Tactics, and Industrial Relations. The accommodations were over-taxed and even at the sessions in the large Curran Theatre, people were standing in the aisles.

Professional organizations of lawyers are of utmost importance, not merely in the promotion of professional interests, but in the performance of that community service which is, or should be, our chief concern and ambition. Our members are urged to be on the

constant alert for new members for our own association. They are also urged to join the American Bar Association whose Journal should be received and read by every lawyer.

The 1950 State Bar convention will undoubtedly be held somewhere in the south. Our members should plan to attend.—

CLARENCE B. RUNKLE

## NEW COMMITTEE APPOINTMENTS

Since the publication of new committees in the June number of the BULLETIN, new committee appointments have been made as follows:

### NEW COMMITTEES

#### COMMITTEE ON JURY SELECTION

Raymond G. Stanbury, <i>Chairman</i>	Lee Combs
Wm. T. Coffin, <i>Board Member</i>	Richard T. Drukker
Zach Lamar Cobb	Franklin T. Hamilton
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#### COMMITTEE ON LAWYERS' REFERENCE SERVICE

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Don R. Cameron	Austin C. Sherman
Gerald F. Delamer	Adrian C. Stanton
Arthur J. Hair	Paul W. Sampsell
John D. Home	

(Continued on page 41)

## WORK OF 1949 LEGISLATURE

*(Continued from September issue)*

In the Junior Barrister Issue of the BAR BULLETIN (September issue) the Editorial Board presented comments upon what appeared to be the more important changes of general interest contained in the measures signed by the Governor as of July 13, 1949.<sup>1</sup> The Editorial Board<sup>2</sup> has similarly selected for brief comment herein what appear to be the more important changes in the 725 measures signed by the Governor after July 13, 1949. In each instance, unless otherwise noted, the changes took effect on October 1, 1949.

## AMENDMENTS TO CODE OF CIVIL PROCEDURE

*(Continued from September issue)*

**C.C.P. Sec. 89** was amended by Chapter 1519 to increase the jurisdictional amount for municipal courts to \$3,000 in all actions and proceedings presently listed in Sec. 89 (or \$300 per month rental value in forcible entry or unlawful detainer actions) and to confer jurisdiction over all cases in equity to try title to personal property valued at not more than \$3,000.

**C.C.P. Secs. 89, 112 and 396a** were amended and **Sec. 81** was repealed by Chapter 1286, contingent upon the adoption of certain constitutional amendments and not operative in any event before January 1, 1952, to remove concurrent jurisdiction of municipal courts in cities having inferior (justice) courts, to abolish Class A and Class B justice courts by providing for a single class of justice courts, and to raise the jurisdictional limit for justice courts from \$300 to \$500.

**C.C.P. Sec. 338** was amended by Chapter 1540 by the addition of a new Subdivision 6 providing for specific limitation periods on actions against a notary public on his bond or in his official capacity.

<sup>1</sup> There was omitted from the September issue, by reason of space limitations, a small portion of the changes signed by the Governor prior to July 13, 1949. These changes are for the most part presented herewith. However, no summary of the changes in the Revenue and Taxation Code is presented by reason of the current presentation of such changes in the various tax services.

<sup>2</sup> The Junior Barristers Editorial Board consisted of Chester Lappen, Editor in Chief, James D. Harris, Robert J. Meserve, Bradner Petersen, Jacob Swartz, Robert S. Thompson and Philip F. Westbrook. The Board was assisted in this particular project by Franklin T. Hamilton, Ira Price and William Robertson. The work was under the general direction of Mr. Westbrook.

**C.C.P. Sec. 376** was amended by Chapter 1380 to harmonize the section with the new Civ. Code Sec. 956 which provides for the survival of tort actions. Under amended Sec. 376 the death of a minor child or ward does not abate the parents' or guardian's cause of action for his injury as to damage accruing before his death, but in such case the damages are limited to the same extent as those set forth in the new Civ. Code Sec. 956. If the person causing or responsible for the injury dies, the action does not abate, but may be brought against his personal representative.

**C.C.P. Sec. 412** was amended by Chapter 1124 to eliminate the necessity of filing an affidavit respecting certificates of residence when serving a summons by publication. Gov't. Code Sec. 27291, which provided for filing of certificates of residence was repealed by this same Chapter.

**C.C.P. Sec. 580(b)** was amended by Chapter 1599 to provide that where both a chattel mortgage and a deed of trust or mortgage are given to secure payment of the balance of the combined purchase price of both real and personal property, no deficiency shall lie under any one thereof.

**C.C.P. Sec. 694** was amended by Chapter 1480 to provide that, when postponement of an execution sale or a sale under power contained in a deed of trust to an agreed time and place is requested in writing by both debtor and creditor, the sheriff or trustee shall effect such postponement by public declaration at the time and place last appointed for such sale.

**C.C.P. Sec. 749.1** was added by Chapter 1025 and provides that a quiet title action against known and unknown claimants may be commenced by an adverse possessor in ten years continuous adverse possession prior to the filing of the complaint, if he has paid all taxes on the property which were payable during the ten years immediately prior to the filing of the complaint; the new action is stated to be cumulative to the action provided by C.C.P. Sec. 749.

**C.C.P. Sec. 1057(a)** was amended by Chapter 1505 to provide, in connection with justification by a corporate surety on a bond or undertaking, that the county clerk shall rely solely upon information furnished by the insurance commissioner in issuing the required certificate as to the corporate surety's authority to transact business.

**C.C.P. Sec. 1057(b)** was added by Chapter 1501 to provide that one can not except to the sufficiency of a corporate surety on a bond or undertaking unless he serves and files: (1) a county clerk's

*(Continued on page 53)*

## AVAILABILITY OF ATTACHMENT UNDER CALIFORNIA LAW

E. Talbot Callister\* of the Barristers



E. Talbot Callister

THE writ of attachment is the most frequently used of the provisional remedies, its purpose being to afford the plaintiff a means of securing a lien on the defendant's property prior to judgment and thus giving him a priority which can be enforced by levy of execution after judgment is obtained. Since attachment did not exist at common law and is purely a creature of statute, the plaintiff has only those rights which are given to him by the statute.<sup>1</sup>

In the great majority of cases the plaintiff's right to an attachment in California is governed by Subdivision (1) of Section 537 of the Code of Civil Procedure. This subdivision requires that the action be "upon a contract, express or implied, for the direct payment of money, where the contract is made or payable in this State, and is not secured by any mortgage, deed of trust or lien upon real or personal property, or any pledge of personal property, or, if originally so secured, such security has, without any act of the plaintiff, or the person to whom the security was given, become valueless." The meaning of these requirements has been a source of frequent litigation in this state.

### THE ACTION MUST BE EX CONTRACTU

The above subdivision limits the right of attachment to actions which sound in contract, and it is not available in actions sounding in tort.<sup>2</sup> It sometimes becomes difficult, however, to determine whether the *gravamen* of an action is *ex contractu* or *ex delicto*. This is especially true where the complaint seeks to recover money which the defendant obtained by tortious means.

\*Mr. Callister was born in Salt Lake City, Utah, received his B.A. degree from the University of California (at Berkeley) in 1943, and his Bachelor of Law degree from the University of Southern California in 1948. From 1942 until 1946, he served as a lieutenant with the United States Naval Reserve and is now associated with the firm of Sheppard, Mullin, Richter & Balthis.

<sup>1</sup>*Rudolph v. Saunders*, 111 Cal. 233, 43 Pac. 619 (1896); *Hallidie v. Enginger*, 175 Cal. 505, 166 Pac. 1 (1917).

<sup>2</sup>*Hallidie v. Enginger*, 175 Cal. 505, 166 Pac. 1 (1917); *San Francisco Iron & Metal Co. v. Abraham*, 211 Cal. 552, 296 Pac. 82 (1931).

Thus in *Hallidie v. Enginger*<sup>3</sup> the plaintiff, as trustee for the shareholders of a no longer existing corporation, brought an action to recover money received by the defendant from dividends and as proceeds from the sale of stock which the corporation had been induced to sell him by false representations. The court held that the action was one in tort for fraud and deceit, hence an attachment would not lie.

Where the complaint contains counts sounding in tort and also a common count for the recovery of the unjust enrichment to the defendant, it is well established that in determining the nature of the action the court will look to the more specific allegations of the tort counts rather than the general terms of the common count.<sup>4</sup> Moreover, if there is any doubt as to the nature of the action, the complaint will be construed as sounding in tort, and attachment will not be available to the plaintiff.<sup>5</sup>

#### THE ACTION MUST BE ON AN EXPRESS OR IMPLIED CONTRACT

The wording of the code section does not restrict the right of attachment to actions on an express contract, but also includes "implied" contracts. The use of this term creates a question of statutory interpretation of determining whether it is restricted to true implied contracts, *i.e.*, contracts implied in fact,<sup>6</sup> or whether it also includes contracts implied in law, *i.e.*, quasi contracts.

A contract implied in fact is one, the existence and terms of which are manifested by conduct.<sup>7</sup> It is a true contract and the cases clearly establish that in actions brought on such the writ of attachment is available to the plaintiff.<sup>8</sup>

On the other hand, a contract implied in law is not a true contract,<sup>9</sup> but is based on unjust enrichment and arises where one has obtained a benefit which he may not justly retain. It is an obligation created by the law without regard to the intention of

<sup>3</sup>175 Cal. 505, 166 Pac. 1 (1917).

<sup>4</sup>*Powers v. Freeland*, 114 Cal. App. 146, 299 Pac. 736 (1931); *Oil Well Core Drilling Co. v. Barnhart*, 20 Cal. App. (2d) 677, 67 Pac. (2d) 696 (1937).

<sup>5</sup>*Jacobs, Malcolm & Burtt v. Northern Pac. Ry.*, 71 Cal. App. 42, 234 Pac. 328 (1925).

<sup>6</sup>*McCall v. Superior Court*, 1 Cal. (2d) 527, 36 Pac. (2d) 642 (1934).

<sup>7</sup>CALIF. CIVIL CODE, Sec. 1621; *Jennings v. Bank of California*, 79 Cal. 323, 21 Pac. 852 (1889).

<sup>8</sup>*McCall v. Superior Court*, 1 Cal. (2d) 527, 36 Pac. (2d) 642 (1934).

<sup>9</sup>*Ibid.*

(Continued on page 43)

## A NEVADA LAWYER LOOKS AT CALIFORNIA'S NEW UNIFORM DIVORCE RECOGNITION ACT

By William G. Ruymann\*



William G. Ruymann

THE problems incident to interstate recognition of divorces have long been with us. The task of reconciling local interests, the rights of the parties to the divorce, and the Constitutional mandate of full faith and credit has been before our courts for nearly a century and a half.<sup>1</sup> During that period much has been accomplished toward protecting the party who relies on the nation-wide validity of a divorce obtained in any particular state,

as well as the spouse-defendant who does not reside in the state granting such a divorce.

Two vital characteristics must be present for a satisfactory divorce law from a national viewpoint. First, there must be certainty. When a judgment is rendered, we must be able to say with confidence whether it is valid or not. Second, there must be fairness to both spouses involved in the proceedings.

The recent cases of *Sherrer*<sup>2</sup> and *Estin*<sup>3</sup> have gone far toward achieving these desirable ends. Under the present Constitutional doctrine, it is clear that a divorce is entirely effective to dissolve the status of marriage if both of the spouses were within the personal jurisdiction of the court awarding the decree.<sup>4</sup> On the other hand, if the defendant-wife has obtained a valid award of separate maintenance in one state, her husband's *ex parte* divorce in a second

\*Member of the Nevada Bar. Mr. Ruymann holds degrees from University of Southern California (A.B.) and George Washington University (L.L.B.). He is a member of the American Bar Association, Federal Bar Association, and American Judicature Society. Formerly he was an attorney in the appeals division in the office of the chief counsel of the Bureau of Internal Revenue. He is the author of the recently published Nevada Divorce Manual.

<sup>1</sup>For an early example see *Jackson v. Jackson*, 1 John. 424 (N.Y. 1806).

<sup>2</sup>334 U.S. 343, 68 S.Ct. 1087, 92 L.Ed.1429, 1 A.L.R.(2d) 1355 (1948).

<sup>3</sup>334 U.S. 541, 68 S.Ct. 1213, 92 L.Ed.1561, 1 A.L.R.(2d) 1412 (1948).

<sup>4</sup>The California Supreme Court has had occasion to apply the *Sherrer* case. In *Heuer v. Heuer*, 33 Adv. Cal. 241, 244, 201 Pac. (2d) 385, 387 (1949), the Court stated: "The test therefore is not whether the issue of jurisdiction was actively litigated in the court rendering the divorce decree. It is sufficient if the defendant has participated in the proceedings and had full opportunity to litigate the issue. If so, the decree is binding even though a relitigation of the question of jurisdictional residence requirements in another State might result in a finding that the domiciliary claim was fraudulently asserted for the purpose of obtaining a decree which as a matter of policy could not be procured in the State of actual domicile."

state, even though he is domiciled there, will not affect her right to such maintenance. While these two rules may appear somewhat inconsistent, they are amply justifiable on grounds of due process, or fairness, as we have referred to this factor.

But there are still those among us who are not satisfied with the pattern drawn by judicial evolution in the field of constitutional law and divorce. Some are dissatisfied because the recognition of sister-state divorces has been limited too severely; others feel that the Supreme Court is going too far in disregarding the basic right of the states to control their local affairs.

Among the fruits of the efforts of the latter group is the recently promulgated Uniform Divorce Recognition Act. As adopted this year in California, this Act is designed to speed up the process of resolving the dilemma. The extent of its effectiveness in that regard is the question to be examined briefly herein.

The California Act provides:<sup>5</sup>

"§150. This article may be cited as the Uniform Divorce Recognition Act.

§150.1. A divorce obtained in another jurisdiction shall be of no force or effect in this State, if both parties to the marriage were domiciled in this State at the time the proceeding for the divorce was commenced.

§150.2. Proof that a person hereafter obtaining a divorce from the bonds of matrimony in another jurisdiction was (a) domiciled in this State within twelve months prior to the commencement of the proceeding therefor, and resumed residence in this State within eighteen months after the date of his departure therefrom, or (b) at all times after his departure from this State and until his return maintained a place of residence within this State, shall be *prima facie* evidence that the person was domiciled in this State when the divorce proceeding was commenced.

§150.3. This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

§150.4. *The application of this article is limited by the requirement of the Constitution of the United States that*

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<sup>5</sup>The Act adds the indicated sections to the CALIFORNIA CIVIL CODE.

*(Continued from page 34)*

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## U.S.C. LAW SCHOOL ANNOUNCES SECOND INSTITUTE ON FEDERAL TAXATION

The School of Law of the University of Southern California announces its Second Annual Institute on Federal Taxation to be held at the School of Law on October 19, 20 and 21. This year's Institute will be modeled after last year's highly successful Institute which attracted 400 attorneys, accountants, trust officers, life insurance underwriters and corporation executives working in the field of federal taxation.

This year's Institute will deal with the practical tax problems encountered in drafting legal documents with emphasis on community property in Western States and in business planning. Entire morning and afternoon sessions will be devoted to a single general topic such as the formation, operation and dissolution of a partnership or corporation, the drafting of wills and testamentary trusts and the probate of an estate. Accountants will also speak on net operating loss carry-backs, what is an unreasonable accumulation of surplus under Section 102, and inventories.

One substantial change in this year's Institute, in response to popular demand, will be a special evening question period at which speakers of the day will answer questions. This will give anyone with a difficult tax problem an opportunity to get the advice of the experts. The questions and answers will not be published in the proceedings.

Anyone desiring further information about the Institute should write to Prof. John W. Ervin, 3660 University Ave., Los Angeles 7, California.

## GOLF COMMITTEE ANNOUNCES TOURNAMENT RULES AND TROPHIES

THE 1949 Golf Committee of the L. A. Bar Association announces the procurement of the following golf trophies:

First, a perpetual trophy in the form of a handsome loving cup for the lowest average *net* score. The winner will have possession of the cup for a year and will have his name engraved thereon.

Second, a beautiful electric desk clock for the lowest average *gross* score for the year.

There is still plenty of time to qualify for these and other prizes. The regular monthly tournaments will continue at Wilshire Coun-

*(Continued on page 52)*

## AVAILABILITY OF ATTACHMENT

(Continued from page 38)

the parties and is designed to restore the aggrieved party to his former position by return of the thing or its equivalent in money.<sup>10</sup> The term "implied contract" is often loosely used to refer both to contracts implied in fact and also quasi contracts.<sup>11</sup>

Despite some early doubts, it is now settled that the term "implied contracts" as used in Section 537 includes quasi contracts.<sup>12</sup> This inclusion has greatly expanded the field in which attachments will lie, making it possible, in a proper case, for the plaintiff in an action growing out of tort, to waive the tort, bring an action on the common count for the unjust enrichment, and secure an attachment. Familiar examples are cases where an action is brought for the reasonable value of goods which have been converted by the defendant,<sup>13</sup> or where the owner brings an action for the reasonable value of the use of land wrongfully occupied.<sup>14</sup> In such cases, however, the complaint must clearly waive the tort and seek a remedy by way of common count, otherwise attachment will not be available since the action would sound in tort rather than in contract.<sup>15</sup>

Where there is a breach of a contract obligation other than to pay money, the remedy of attachment will not be available, since neither an action upon an express contract for the payment of money nor upon a common count will lie.<sup>16</sup>

The inclusion of implied in law contracts within Section 537 has also expanded the remedy of attachment in those cases where a party is entitled to rescind. The California statutes provide for three types of rescission—by mutual consent of the parties,<sup>17</sup> by decree of the court,<sup>18</sup> and in certain circumstances, by act of the aggrieved party, where the necessary procedural steps are followed.<sup>19</sup>

<sup>10</sup>*Ibid.*; *Philpott v. Superior Court*, 1 Cal. (2d) 512, 36 Pac. (2d) 635 (1934).

<sup>11</sup>*McCall v. Superior Court*, 1 Cal. (2d) 527, 36 Pac. (2d) 642 (1934).

<sup>12</sup>*S. C. V. Peat Fuel Co. v. Tuck*, 53 Cal. 304 (1878); *De Leonis v. Etchepare*, 120 Cal. 407, 52 Pac. 718 (1898).

<sup>13</sup>*Corey v. Struve*, 170 Cal. 170, 149 Pac. 48 (1915); *Los Angeles Drug Co. v. Superior Court*, 8 Cal. (2d) 71, 63 Pac. (2d) 1124 (1936).

<sup>14</sup>*Taggart v. Shepherd*, 122 Cal. App. 755, 10 Pac. (2d) 808 (1932); *Richmond Wharf & Dock Company v. Blake*, 181 Cal. 454, 185 Pac. 184 (1919).

<sup>15</sup>*Hallidie v. Enginger*, 175 Cal. 505, 166 Pac. 1 (1917); *San Francisco Iron & Metal Co. v. Abraham*, 211 Cal. 552, 296 Pac. 82 (1931).

<sup>16</sup>*Willett & Burr v. Alpert*, 181 Cal. 652, 185 Pac. 976 (1919); *Sturtevant v. K. Hovden Co.*, 60 Cal. App. 696, 214 Pac. 244 (1923).

<sup>17</sup>CALIF. CIVIL CODE, Sec. 1689.

<sup>18</sup>CALIF. CIVIL CODE, Secs. 3406-3408.

<sup>19</sup>CALIF. CIVIL CODE, Secs. 1688-1689, 1691.

The much criticized case of *Stone v. Superior Court*<sup>20</sup> laid down the former rule that an aggrieved party could not rescind a contract under Civil Code Sections 1689 *et seq.*, bring an action in quasi contract for the unjust enrichment to the defendant, and obtain a writ of attachment, since such an action sounded in tort for fraud and was equitable in nature. Subsequent cases qualified the rule of the *Stone* case<sup>21</sup> and it was later overruled in *McCall v. Superior Court*<sup>22</sup> where the court established the present rule that a party may effect a rescission *in pais* under Section 1689, bring an action on the resulting promise implied in law for the unjust enrichment to the defendant, and secure an attachment. In such a case the contract no longer exists due to the rescission, and it is not necessary to secure an equitable decree to accomplish such. Moreover, it is necessary that the complaint allege facts showing the plaintiff's right to rescind and for what cause a rescission has taken place.<sup>23</sup>

This procedure, however, is available only where there is a rescission by mutual consent of the parties or a rescission *in pais* under Section 1689. An attachment is not available to the plaintiff in those actions where it is necessary to obtain rescission by decree of the court.<sup>24</sup>

#### THE ACTION MUST BE FOR THE DIRECT PAYMENT OF MONEY

Section 537 requires that the action be one for money, but it does not require that the sum be liquidated. Accordingly, attachment is available to the plaintiff where the amount is ascertainable according to fixed standards supplied by the contract or the law.<sup>25</sup> It is not necessary that the debt be due the plaintiff,<sup>26</sup> and where the action is such that attachment will lie as to part, the presence of other elements of damages not subject to attachment does not preclude it.<sup>27</sup> Of course, attachment will not lie for breach of contract on an obligation other than to pay money

<sup>20</sup>214 Cal. 272, 4 Pac. (2d) 777 (1931).

<sup>21</sup>*Bennett v. Superior Court*, 218 Cal. 153, 21 Pac. (2d) 946 (1933); *Philpott v. Superior Court*, 1 Cal. (2d) 512, 36 Pac. (2d) 635 (1934).

<sup>22</sup>1 Cal. (2d) 527, 36 Pac. (2d) 642 (1934).

<sup>23</sup>*Swanston v. Clark*, 153 Cal. 300, 95 Pac. 1117 (1908).

<sup>24</sup>*Ralphs v. Burns*, 22 Cal. App. 153, 133 Pac. 997 (1913); *Doud v. Jackson*, 102 Cal. App. 213, 283 Pac. 107 (1929).

<sup>25</sup>*Greenebaum v. Smith*, 51 Cal. App. 692, 197 Pac. 675 (1921); *Redwood Fibre Products Co. Inc. v. Miller Mfg. Co.*, 61 Cal. App. (2d) 505, 143 Pac. (2d) 389 (1943).

<sup>26</sup>*Karn v. Wills*, 50 Cal. App. (2d) 604, 123 Pac. (2d) 640 (1942).

<sup>27</sup>*Doud v. Jackson*, 102 Cal. App. 213, 283 Pac. 107 (1929); *Redwood Fibre Products Co. Inc. v. Miller Mfg. Co.*, 61 Cal. App. (2d) 505, 143 Pac. (2d) 389 (1943).

for the reason that neither an action upon an express contract for the payment of money nor upon a common count will lie.<sup>28</sup>

### THE CONTRACT MUST BE MADE OR PAYABLE IN CALIFORNIA

The statute requires that the contract upon which the action is brought be made or payable in this state. Since this requirement is in the alternative it would seem evident that either will suffice.

A contract is made at the place where the offer is accepted, since it is at that time that a binding agreement is effected.<sup>29</sup> Although it is established that an action on a foreign judgment is an action on a contract,<sup>30</sup> it is not upon a contract made or payable in California hence an attachment will not lie.<sup>31</sup> A plaintiff cannot circumvent the statutory requirement by sending a bill to the defendant in this state and then bringing an action on an account stated when the bill is not disputed.<sup>32</sup> To allow attachment in such a case would be contrary to "the letter and spirit" of the attachment statute.<sup>33</sup>

A contract satisfies the requirement of being payable in California only if it expressly provides for such.<sup>34</sup> It is no answer to this requirement that the obligation is transitory in nature hence payable wherever the defendant can be found.<sup>35</sup> Principles in other fields of law, such as the rule that for venue purposes a contract is held performable where the circumstances indicate that the parties expected or intended it to be performed,<sup>36</sup> will not allow the plaintiff to secure an attachment.<sup>37</sup> An analogous situation arose in *Atwood v. Little Bonanza Quicksilver Co.*,<sup>38</sup> involving an action against a corporation on promissory notes which were executed in Massachusetts but were silent as to any place of payment. The Court held a statute which provided that a "negotiable instrument which does not specify a place of payment is payable at

<sup>28</sup>*Willett & Burr v. Alpert*, 181 Cal. 652, 185 Pac. 976 (1919); *Doud v. Jackson*, 102 Cal. App. 213, 283 Pac. 107 (1929).

<sup>29</sup>*Bank of Yolo v. Sperry Flour Co.*, 141 Cal. 314, 74 Pac. 855 (1903).

<sup>30</sup>*Bean v. Loryea*, 81 Cal. 151, 22 Pac. 513 (1889); *Miller v. Murphy*, 186 Cal. 344, 199 Pac. 525 (1921).

<sup>31</sup>*Erickson v. Erickson*, 47 Cal. App. 319, 190 Pac. 464 (1920).

<sup>32</sup>*Beltaire v. Rosenberg & Son*, 129 Cal. 164, 61 Pac. 916 (1900).

<sup>33</sup>*Ibid.*

<sup>34</sup>*Dulton v. Shelton*, 3 Cal. 206 (1853); *Eck v. Hoffman*, 55 Cal. 501 (1880); *Tuller v. Arnold*, 93 Cal. 166, 28 Pac. 862 (1892).

<sup>35</sup>*Dulton v. Shelton*, 3 Cal. 206 (1853); *Eck v. Hoffman*, 55 Cal. 501 (1880); *Tuller v. Arnold*, 93 Cal. 166, 28 Pac. 862 (1892).

<sup>36</sup>*Bank of Yolo v. Sperry Flour Co.*, 141 Cal. 314, 74 Pac. 855 (1903).

<sup>37</sup>*Dulton v. Shelton*, 3 Cal. 206 (1853); *Tuller v. Arnold*, 93 Cal. 166, 28 Pac. 862 (1892).

<sup>38</sup>13 Cal. App. 594, 110 Pac. 344 (1910).

the residence or place of business of the maker, or wherever he may be found"<sup>39</sup> would not entitle the plaintiff to an attachment even though the corporation was doing business in California.

However where a contract which is not made or payable in California is completely superseded by a later contract which is made in this state, any obligations created under this later contract can serve as a basis for an attachment, since by virtue of this later contract the place of performance is changed to the place where the later contract is made.<sup>40</sup> It is necessary that the later agreement make specific reference to these obligations.<sup>41</sup>

### THE SECURITY PROVISION

Section 537 states that the contract must not be secured by any of the kinds of security therein enumerated, unless without act of the plaintiff or the person to whom it was given, the security has become valueless.

Since the statute sets forth certain types of security, other forms of security which are not included within the statute will not preclude attachment.<sup>42</sup> The security must be one given for the particular claim forming the basis of the plaintiff's action, and the presence of security on other or collateral contracts will not defeat the plaintiff's right to an attachment.<sup>43</sup> Also, to be within the statute the security must be of a fixed, determinate and unconditional character, capable of being enforced with certainty.<sup>44</sup>

If such a lien exists, the statute draws no distinction as to whether its origin is equitable, statutory or by virtue of contract.<sup>45</sup> Furthermore, no inquiry will be made into the value of the lien or its sufficiency to cover the amount of the claim it was intended to secure.<sup>46</sup>

While the plaintiff's claim may have been originally secured within the meaning of the section, attachment will be available if this security has become valueless without any act of the plaintiff or the person to whom it was given. This has been interpreted to

<sup>39</sup>CALIF. CIVIL CODE, Sec. 3100 (repealed by Stats. 1917, p. 1535).

<sup>40</sup>*Republic Truck Sales Corporation v. Peak*, 194 Cal. 492, 229 Pac. 331 (1924).

<sup>41</sup>*Ibid.*

<sup>42</sup>*Standard Auto Sales Co. Inc. v. Lehman*, 43 Cal. App. 763, 186 Pac. 178 (1919); *Hougham v. Rowland*, 33 Cal. App. (2d) 11, 90 Pac. (2d) 860 (1939).

<sup>43</sup>*Aronson & Co. v. Pearson*, 199 Cal. 286, 249 Pac. 188 (1926); *Kelley v. Gold-Schmidt*, 47 Cal. App. 38, 190 Pac. 55 (1920).

<sup>44</sup>*Porter v. Brooks*, 35 Cal. 199 (1868); *D'Alessandro v. Pickford*, 22 Cal. App. (2d) 239, 70 Pac. (2d) 646 (1937).

<sup>45</sup>*Hill v. Grigsby*, 32 Cal. 55 (1867).

<sup>46</sup>*Beaudry v. Vache*, 45 Cal. 3 (1872).

mean that the property given must have ceased to have any value as security.<sup>47</sup> It is not necessary that the property itself has become valueless, but only that it ceases to have value as security.<sup>48</sup> Thus in *Williams v. Hahn*<sup>49</sup> a creditor, who in accordance with the terms of the contract, had sold property pledged as security, was entitled to a writ of attachment in an action brought against the debtor for the balance of the debt since the security had ceased to exist and was therefore valueless. Where the complaint shows that the plaintiff's claim was originally secured, it is necessary that the affidavit of attachment aver that the security has become valueless without fault of the plaintiff or the person to whom it was given,<sup>50</sup> for otherwise any attachment will be void.<sup>51</sup>

<sup>47</sup>*Williams v. Hahn*, 113 Cal. 475, 45 Pac. 815 (1896).

<sup>48</sup>*Ibid.*

<sup>49</sup>113 Cal. 475, 45 Pac. 815 (1896).

<sup>50</sup>*Kreider v. American Surety Co.*, 6 Cal. App. (2d) 307, 43 Pac. (2d) 831 (1935); *Yosemite Growers Co-op. Assoc. v. Case Swayne Co.*, 73 Cal. App. (2d) 806, 167 Pac. (2d) 541 (1946).

<sup>51</sup>*Kreider v. American Surety Co.*, 6 Cal. App. (2d) 307, 43 Pac. (2d) 831 (1935).

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### EQUITABLE ACTIONS

Section 537 makes no distinction between legal and equitable actions. Whereas some cases indicate that attachment will lie where incidental equitable powers are involved but not where the foundation of the action is a demand for equitable relief,<sup>52</sup> the present rule seems to be that if the action is for recovery upon a contract, it is immaterial whether the action is legal, equitable or both.<sup>53</sup>

### CONCLUSION

From the preceding discussion, the California law with respect to the availability of attachment under Subdivision (1) of Section 537 of the Code of Civil Procedure may be summarized as follows:

- (1) Attachment is available only in actions *ex contractu*, and the court will look to the entire complaint to determine the *gravamen* of the action;
- (2) Attachment is available not only in actions upon express contracts, but also those based on contracts implied in fact and quasi contracts;
- (3) In a proper case a plaintiff may secure an attachment by waiving the tort and bringing his action on a common count for the unjust enrichment to the defendant;
- (4) A party may effect a rescission *in pais* and secure an attachment by bringing his action on a common count for the unjust enrichment to the defendant;
- (5) The action must be for the payment of money, but the sum need not be liquidated if it is ascertainable, and it need not be due to the plaintiff;
- (6) The contract must be either made in this state or expressly provide that payment is to be made in California;
- (7) Attachment will not be available if the plaintiff's claim is secured by one of the kinds of security enumerated in the code section and is of a determinate and unconditional character, unless the security has become valueless without any act on his part or of the person to whom it was given; and
- (8) If the action meets the requirements of Section 537 of the Code of Civil Procedure, it is immaterial whether the action is legal or equitable in nature.

<sup>52</sup>*Hallidie v. Enginger*, 175 Cal. 505, 166 Pac. 1 (1917); *Stone v. Superior Court*, 214 Cal. 272, 4 Pac. (2d) 777 (1931).

<sup>53</sup>*Stanford Hotel Co. v. M. Schwind Co.*, 180 Cal. 348, 181 Pac. 780 (1919); *Karn v. Wills*, 50 Cal. App. (2d) 604, 123 Pac. (2d) 640 (1942).

## UNIFORM DIVORCE RECOGNITION

(Continued from page 40)

*full faith and credit shall be given in each state to the public acts, records and judicial proceedings of every other state."*  
[Italics added]

What is the effect of this Act? Section 150.1 states existing law, limited by the doctrine of the recent *Sherrer* case. To the extent that the section purports to invalidate a divorce obtained in a proceeding in which both parties appeared, it is unconstitutional under the rule of the above case.

Let us look at previously existing California Law. Section 90 (2) of the Civil Code declares that marriage is dissolved only:

"2. By the judgment of a court of competent jurisdiction decreeing a divorce of the parties."

Section 1916 of the Code of Civil Procedure provides that:

"Any judicial record may be impeached by evidence of a want of jurisdiction in the court or judicial officer, . . . in respect to such proceedings."<sup>6</sup>

Thus, the first section of the new Act adds nothing to the present law except some unconstitutional provisions covered by its generality.

Section 150.2 presents some more interesting questions. It provides a rule of evidence in aid of the policy set out in subsection one. Suppose a person, domiciled in California, moved to another state. After living there for eleven months, he commenced an action for divorce in that state. Sometime after obtaining the divorce, he moved to a third state for a year, and then to still a fourth in which he lived for over five months. If he then decided to return to California to reside, his divorce would be subject to the presumption of invalidity created by this section of the Uniform Act. In other words, such a person might be living outside of California for two and one-half or three years, and yet be met with a presumption that he had never acquired a domicile in another state. This, in spite of all the elements required to effect a change of domicile to the other state!

This provision may well be subject to question on the grounds of due process. While a presumption is entirely proper if it embodies a reasonable inference, there is certainly room for doubt here. Space will not permit an extended discussion of this question, but

<sup>6</sup>See *Crouch v. Crouch*, 28 Cal.(2d) 243, 250-251, 169 Pac.(2d) 897, 901 (1946).

it is a matter which will undoubtedly be raised in future litigation.

Moreover, California's much-discussed rule providing that presumptions constitute evidence may give rise to other problems.<sup>7</sup> Under the full faith and credit clause, a judgment must be accorded the same respect in another state as it would have received in the rendering state. To this rule is the corollary that the jurisdiction of the original court may be questioned in order to ascertain whether the judgment is entitled to recognition in any court. The policy of the Constitutional provision, however, clearly requires that the party attacking a foreign judgment on the ground of lack of jurisdiction bear the burden of proving that point.<sup>8</sup> If the presumption in the new Act has the effect of changing the policy in California, it may again be subject to Constitutional attack. Though the new rule appears to shift only the burden of going forward in the trial, the fact that the presumption will be treated as "evidence" in itself gives rise to further problems.

There has been some argument that the presumption may limit the application of the *Sherrer* case. Thus, it is claimed, that case relied on *res judica* and opportunity to litigate the issue on the plaintiff's domicile in the original divorce action: the new presumption relates to matters occurring after the original action which could not have been raised therein.

It is true that the new Act deals partially with conduct of the plaintiff after the divorce has been obtained. But it still is the question of his domicile at the time of the divorce action that is in issue. That matter was before the court, and if both parties appeared at that time, with full opportunity to be heard on that question, re-litigation on the issue is not available. The fact that new "evidence" has been found in subsequent conduct of a party is immaterial, in the absence of extrinsic fraud.

Thus, it seems clear that under both the general judicially developed law, and existing California statutes, the situation was not changed by the enactment of the new California Act, except that the presumption has been added. Even this is subject to serious Constitutional doubts, and is already severely restricted by the *Sherrer* case.

Section 150.3 states the usual rule that the Act shall be interpreted in such a way that the purpose of uniform state laws may be carried

<sup>7</sup>See 10 CAL. JUR. 744.

<sup>8</sup>*Delaney v. Delaney*, 216 Cal. 27, 13 Pac.(2d) 719, 86 A.L.R. 1321 (1932): See *Crouch v. Crouch*, 28 Cal.(2d) 243, 169 Pac. (2d) 897 (1946).

out. Only three other states<sup>9</sup> have adopted the Act.

California alone adopted Section 150.4, which declares the obvious: the Act is subject to the limitations of the Federal Constitution. The weakness and futility of such legislation is officially declared in this section.

Over the years, many courts have developed a flexibility in the treatment of recognition of foreign divorces. They have looked to the facts and circumstances in each case and based their results upon the fairness involved in the particular situation; many divorces are thus recognized even though not within the requirements of full faith and credit. This practice, whether called comity, estoppel, or public policy, has been a healthy one. As recently stated by the Montana Court:

"But an equally compelling reason for [rejecting a] . . . collateral attack upon the divorce decree of the Nevada Court is the decent regard and respect we owe to the judgments of the courts of sister states. Even though the full faith and credit clause of the Federal Constitution does not prohibit a collateral attack . . . the rules of comity . . . [do]."<sup>10</sup>

The wisdom of such procedure in a given case should be left to the court; certainly the legislature should not make a general provision for recognizing all foreign divorces. By the new Uniform Act, the California Legislature has declared that any such recognition is not to be granted unless absolutely required by the Constitution. Thus, perhaps the Act will have some effect upon future judicial action.

Another effect of the Act is apparent. Intentionally or otherwise, it will undoubtedly serve as a "scare law." The people of California may be reluctant to rely on out-of-state divorces, at least until the new law is tested, and its limitations pointed out.

Whatever the strength or weakness of the Act, effective October 1, 1949, it represents an important declaration of policy and deserved more consideration than that accorded it by the California State Senate Judiciary Committee, which sent the bill to the Senate floor "without a word of discussion."<sup>11</sup>

<sup>9</sup>The best available information indicates that California, Nebraska, New Hampshire and Washington have adopted the Uniform Act. Wisconsin has been seriously considering it also.

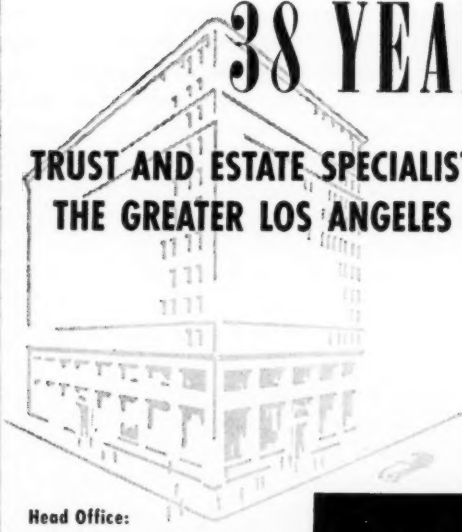
<sup>10</sup>In *re Anderson's Estate*, 194 Pac.(2d) 621, 625 (1948), noted in 1 BAYLOR L. REV. 179 (1948).

<sup>11</sup>Associated Press dispatch, Sacramento, April 26, 1949.

*(Continued from page 42)*

try Club on October 28th and at Riviera Country Club on November 18th. Thereafter, tournaments for the rest of this year will be at public and private courses.

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**WORK OF 1949 LEGISLATURE***(Continued from page 36)*

certificate stating that the surety has not been certified to him by the insurance commissioner or that such certificate is not currently valid, and (2) an affidavit stating facts establishing the insufficiency of the bond or surety.

**C.C.P. Sec. 1191** was amended by Chapter 1547 to extend the lien benefits of the section to persons making improvements on real property, including persons acting directly or indirectly under the authority of the owner, whereas previously the lien benefits were restricted to persons acting on the request of the owner. The amendment also establishes the procedure for perfecting the lien and designates the preference of the lien.

**C.C.P. Sec. 1274(bb)**, dealing with escheat of money or property in the custody of a United States court or court officer, was amended by Chapter 1476 to shorten the period during which the property or money must have been abandoned or the owner must have been unknown from ten to five years.

**C.C.P. Sec. 1274(bbb)** was added by Chapter 1156 to provide for escheat to the State of any money or property which had its situs or source within California and which is in the custody or the control of the United States government or any of its officers and agencies, where the rightful owner has abandoned the same or has been unknown for a period of five years or dies without a will and without heirs.

**AMENDMENTS TO THE CIVIL CODE***(Continued from September issue)*

**Civ. Code Sec. 48.5** was added by Chapter 1258 to provide, with reference to defamatory statements over radio or television, that: (1) operator of the originating station is not liable for defamatory statements, if published in a broadcast by one other than the operator and if operator exercises due care to prevent such publication, and (2) in no event shall operator of station be liable where defamatory statement is originated in another station, or (3) where originated in his station, defamatory statement is made by or on behalf a candidate for public office and cannot be censored under rules of F.C.C.

**Civ. Code Sec. 146**, relating to assignment of homesteads upon the granting of a divorce, was amended by Chapter 1589 to provide that nothing contained therein shall limit the power of the

court to make a temporary assignment of the homestead at any stage of the divorce proceeding.

**Civ. Code Sec. 150**, being the Uniform Divorce Recognition Law, was added by Chapter 1292 to provide that a foreign divorce is of no effect if both parties are domiciled in California at time divorce action is filed. Prima facie evidence of California domicile is established by proof (a) of California domicile within 12 months of filing and resumption of California domicile within 18 months of departure from California or (b) maintenance of a place of residence in California at all times after departure from and return to California.

**Civ. Code Sec. 224** was amended by Chapter 960 to permit adoption of an illegitimate child without the consent of the mother where the child has been relinquished to an authorized child placing agency *outside* the State of California.

**Civ. Code Sec. 956** was added by Chapter 1380 to provide that tort actions shall survive the death of either the plaintiff or defendant, but the damages recoverable in the event of the death of the plaintiff are limited to loss of earnings and expenses sustained or incurred as a result of the injury and shall not include damages for pain, suffering, or disfigurement, nor punitive or exemplary damages, nor prospective earnings or profits after the date of death. Damages recovered become part of the estate of the deceased.

**Civ. Code Sec. 980** was amended by Chapter 921 to declare in an additional subsection that the inventor or proprietor of any invention or design has an exclusive ownership therein so long as the invention or design and the representations or expressions thereof (if any) remain in his possession. Secs. 981, 982 and 983, relating to joint ownership, transfer and publication, were amended in recognition of the foregoing change. Sec. 984 was added by the same chapter to give any person subsequently and originally producing an invention or design, which the original owner has not made public, the same right as the prior inventor against all persons except the prior inventor or his successors.

**Civ. Code Sec. 2469.1** was added by Chapter 1210 to permit filing and publication of a certificate of cessation of doing business under a fictitious name. **Civ. Code Sec. 2470** was also amended by Chapter 1210 to provide for entry of the fact of abandonment of a fictitious name upon the register kept by the county clerk.

**Civ. Code Sec. 2982** was amended by Chapter 1594 to provide

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that a buyer of a motor vehicle under a conditional sales contract may pay in full the contract price before the stated maturity date thereof and receive a refund credit for such anticipation of installment payments, and to change the triple damage penalty in cases of fraud or violation of the law to simple recovery by the buyer, from the seller or holder of the conditional sales contract, of consideration paid under the contract.

**Civ. Code Sec. 3440**, dealing with sales of personal property without immediate delivery (bulk sales), was amended by Chapter 1036 to lengthen the time of required notices, to require publication of notice in the township where the property is located rather than the township where the sale is to be made, and, in the case of auction sales, to subject the auctioneer at an auction sale held without proper notice to personal liability.

## AMENDMENTS TO THE CORPORATION CODE

*(Continued from September issue)*

**Corp. Code Sec. 301(b)** was amended by Chapter 997, Sec. 1.5, to provide that the articles of incorporation shall, in addition to

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any desired statement of general purposes or powers, set forth and identify the primary business in which the corporation initially intends to engage.

**Corp. Code Sec. 307** was amended by Chapter 997, Sec. 3, to require that the articles of incorporation be signed and personally acknowledged by the original directors before a properly authorized person who shall not be one of the incorporators.

**Corp. Code Sec. 310** was amended by Chapter 997, Sec. 4 to provide that the reservation of a corporate name can not be given for two or more consecutive 30 day periods.

**Corp. Code Sec. 802** was amended by Chapter 997, Sec. 3.5 to authorize specifically charitable contributions by corporations.

**Corp. Code Secs. 3302, 3303, 3305 and 3306**, dealing with the service of process on domestic corporations, were amended by Chapter 1053 to provide that, where the agent designated to accept service can not be found by diligent search, the court may, upon proper affidavit by the moving party, order service by delivery of the process to the Secretary of State. Thereafter, detailed procedure is established for the notification of the corporation by the Secretary of State. (This change is closely related to the change

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in Section 3301 made by Chapter 746, reported in the September installment of this comment).

**Corp. Code Sec. 3800** is added by Chapter 997, Sec. 31 to permit expressly the consolidation of all prior amendments to the articles of incorporation with the original in a single instrument constituting the articles as amended.

**Corp. Code Secs. 6501, 6502, 6503 and 6504**, dealing with service of process on foreign corporations, were amended by Chapter 1053 to restrict service upon the Secretary of State to instances where a court order so directing has been issued upon proper affidavit, and to establish detailed procedure for the notification of the corporation by the Secretary of State in such instances.

**Corp. Code Sec. 9200** was amended by Chapter 1391 by the addition of a specific prohibition upon the distribution by a non-profit corporation of any gains, profits, or dividends except upon dissolution or winding up.

**Corp. Code Sec. 9400** was amended by Chapter 1391 to require that the adoption, amendment or repeal of a by-law fixing or changing the number of directors of a non-profit corporation be accomplished only by a majority of the voting power or the majority of a quorum at a duly called membership meeting.

**Corp. Code Sec. 15035.5** was added by Chapter 1210 to the Uniform Partnership Act (Chapter 383) to require the publication of a notice upon dissolution of a partnership.

**Note:** Chapter 997 makes numerous changes in the various certificates necessary in action affecting the basic corporate structure (such as amendment of articles, merger, consolidation and dissolution) and should be examined in detail.

## AMENDMENTS TO THE PROBATE CODE

*(Continued from September issue)*

**Prob. Code Sec. 329** was amended by Chapter 1508 to provide that, in the case of an uncontested will, the evidence of one or more subscribing witnesses may be given by an affidavit to which there is attached a photographic copy of the will.

**Prob. Code Sec. 953.1** was amended by Chapter 1601 to provide that, in pending as well as subsequent proceedings, the court may appoint a trustee and direct payment to him of funds from a decedent's estate for payment, as ordered by the court, of claims payable in installments or upon the happening of a contingency.

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Upon completion of such payment any excess funds are to be disposed of in accordance with the decree of distribution.

**Prob. Code Sec. 1233** was amended by Chapter 1508 to require the reception of affidavits or a verified petition as evidence in any uncontested probate proceeding.

## **AMENDMENTS TO THE LABOR CODE**

(General)

**Labor Code Sec. 1585** was amended by Chapter 47 to make the transfer or gift of any interest in an employment agency without the written consent of the Labor Commissioner a misdemeanor instead of merely an Act voiding the agency license.

## **AMENDMENTS TO THE VEHICLE CODE**

**Vehicle Code Sec. 185**, dealing with the transfer of title to automotive vehicles without probate upon the death of the owner, was amended by Chapter 1528 to eliminate any restriction upon the value of the vehicles to be so transferred and to add a new requirement of a statement that there are no creditors or that all creditors have been paid.

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**Vehicle Code Sec. 420**, dealing with the giving of security following an automotive accident, was amended by Chapter 26 to require that the insurance company shall upon receipt of notice of such accident notify the Department of Motor Vehicles only when the insurance policy was *not* in effect at the time of the accident.

## **AMENDMENTS TO THE BUSINESS AND PROFESSIONS CODE**

**B. & P. Code Secs. 11540 and 11541**, relating to the control of subdivision design and improvement, were amended by Chapter 672 to provide that a deed of conveyance is voidable if made contrary to the subdivision chapter provisions and to make the giving of such a deed a misdemeanor.

**B. & P. Code Sec. 17500.1** was added by Chapter 186 to eliminate all restrictions on professional advertising promulgated by boards or commissions within the Department of Professional and Vocational Standards except in the case of rules of professional conduct formulated by the Board of Governors of the State Bar.

## **AMENDMENTS TO THE PERSONAL PROPERTY BROKERS ACT**

**The Personal Property Brokers Act** (Deerings General Laws, Act 5825) was amended by Chapter 1033 to establish a schedule of maximum rates for all loans up to \$5,000 instead of \$300 and to apply the restrictions on "wage buying" also to transactions involving over \$300.

## **CREATION OF FRANCHISE TAX BOARD**

By Chapter 1188 the Legislature abolished (effective January 1, 1950) the office of Franchise Tax Commissioner and created a Franchise Tax Board consisting of the State Controller, the Director of Finance, and the Chairman of the State Board of Equalization. It is specifically provided that the Franchise Tax Board shall have all the duties, powers, purposes, responsibilities and jurisdiction formerly belonging to the Franchise Tax Commissioner. It is further provided that the Franchise Tax Board shall be substituted for the Franchise Tax Commissioner in all actions now pending in which the Commissioner is a party.



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**TAXABLE INCOME: Claim of Right Rule.**

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The "Claim of Right Rule" of the *North American Oil Consolidated* case has apparently become settled law and is supported by an imposing array of decisions. It has been repeatedly explained under the theory that taxable income must be determinable on an annual accounting basis, and the effect of subsequent years should, therefore, be ignored. The Court of Claims in *Greenwald v. U. S.*, 57 F. Supp. 569 (1944), involving similar facts, refused to apply the claim of right rule and instead found for the taxpayer under a mistake of fact rule. The Court of Appeals in the principal case recognized this latter decision, but rejected it as not following the great weight of authority. The rule has been limited by *Commissioner v. Wilcox*, 327 U. S. 404 (1946), a case involving embezzled funds, wherein the Supreme Court held that embezzled funds are not taxable income because

the embezzler takes the funds without a claim of right and under a definite legal obligation to repay them. However, the courts have had little difficulty in distinguishing the *Wilcox* case, and have confined its result to embezzlement situations. The rule thus remains that where a person receives a gain under a claim of right without a then existing obligation to repay such gain, he receives taxable income.

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**STATEMENT OF THE OWNERSHIP, MANAGEMENT, AND CIRCULATION REQUIRED BY THE ACT OF CONGRESS OF AUGUST 24, 1912, AS AMENDED BY THE ACTS OF MARCH 3, 1933, AND JULY 2, 1946 (Title 39, United States Code, Section 233)**

of LOS ANGELES BAR BULLETIN, published monthly at Los Angeles, California, for October 1, 1949.

1. The names and addresses of the publisher, editor, managing editor, and business managers are:

Publisher—Los Angeles Bar Association, 458 S. Spring St., Los Angeles 13, Calif.

Editor—Edwin W. Taylor, 453 S. Spring St., Los Angeles 13, Calif.

Managing Editor—None.

Business Manager—Robert M. Parker, 241 E. Fourth St., Los Angeles 13, Calif.

2. The owner is: (If owned by a corporation, its name and address must be stated and also immediately thereunder the names and addresses of stockholders owning or holding 1 per cent or more of total amount of stock. If not owned by a corporation, the names and addresses of the individual owners must be given. If owned by a partnership or other unincorporated firm, its name and address, as well as that of each individual member, must be given.) Clarence B. Runkle, President, 650 S. Spring St., Los Angeles 14, Calif.; Stevens Fargo, Secretary, 510 S. Spring St., Los Angeles 13, Calif.; Frank C. Weller, Treasurer, 111 W. 7th St., Los Angeles 14, Calif.

3. The known bondholders, mortgagees, and other security holders owning or holding 1 per cent or more of total amount of bonds, mortgages, or other securities are: (If there are none, so state.) NONE.

4. Paragraphs 2 and 3 include, in cases where the stockholder or security holder appears upon the books of the company as trustee or in any other fiduciary relation, the name of the person or corporation for whom such trustee is acting; also the statements in the two paragraphs show the affiant's full knowledge and belief as to the circumstances and conditions under which stockholders and security holders who do not appear upon the books of the company as trustees, hold stock and securities in a capacity other than that of a bona fide owner.

5. The average number of copies of each issue of this publication sold or distributed, through the mails or otherwise, to paid subscribers during the 12 months preceding the date shown above was: (This information is required from daily, weekly, semi-weekly, and triweekly newspapers only.)

ROBERT M. PARKER,  
Business Manager.

Sworn to and subscribed before me this 30th day of September, 1949.

[Seal]

MARGUERITE F. CRIPPS,

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